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MEMORANDUM

TO: Members of the Planning Commission

FROM: David Wahlgren, Subdivision Review

DATE: May 17, 2011

SUBJECT: Ordinance amendment to Title 30-2-87 of the Travis County - City of Austin combined development code (for land located in the City of Austin's Extraterritorial Jurisdiction that is in Travis County) to modify requirements for approval of any residential subdivision to include a cover sheet that provides a consumer protection notice for homebuyers.

This amendment was initiated by the Travis County Commissioners Court to change the requirements for plat approval for any residential subdivision which is located in the City of Austin's Extraterritorial Jurisdiction (ETJ) that is in Travis County, by requiring the applicant to include a cover page with a consumer protection notice for homebuyers. The amendment is intended to notify citizens who purchase lots in the subdivision that there may be fewer local controls in the County for any development near or adjacent to the subdivision, and that development may occur that may not be compatible with their subdivision and may effect the enjoyment and value of their home.

On the surface this appears to be a positive measure. County Commissioners routinely receive communication from unhappy homeowners whenever an undesirable development occurs near their homes, and it is obvious that this note would be a warning to those owners that little can be done in the County regarding this issue.

However, there have been some concerns stated by the Home Builders Association (HBA) as well as the City of Austin Law Department. The HBA stated that they preferred a separate notification document that would show up with the title commitments, and to have the notification show up in the sales contract. It is their opinion that more people would be informed by that method than a cover sheet on a plat. The Law Department sees possible grandfathering issues for plats that are later annexed into the City of Austin. It appears that no one has an issue with advising future home buyers with a notice, it's just how it is presented to them that is the issue.

It should be noted that this amendment will be on the June 14th Planning Commission agenda and the June 23rd City Council agenda.

If you have any further questions or required additional information, please contact me at 974-6455.
david.wahlgren@ci.austin.tx.us

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CONSUMER PROTECTION NOTICE
FOR HOMEBUYERS

IF YOU ARE BUYING A LOT OR HOME IN THIS SUBDIVISION, YOU SHOULD DETERMINE WHETHER THE SUBDIVISION AND THE LAND AROUND IT ARE INSIDE OR OUTSIDE THE CITY LIMITS.

THIS CAN AFFECT THE ENJOYMENT AND VALUE OF YOUR HOME. DEPENDING ON STATE LAW AND OTHER FACTORS, LAND OUTSIDE THE CITY LIMITS MAY BE SUBJECT TO FEWER LOCAL GOVERNMENT CONTROLS OVER THE DEVELOPMENT AND USE OF LAND THAN INSIDE THE CITY LIMITS.

THE SUBDIVISION'S RESTRICTIVE COVENANTS MAY CREATE PRIVATELY ENFORCEABLE RESTRICTIONS AGAINST INCOMPATIBLE LAND USES WITHIN THE SUBDIVISION, WHETHER IT IS INSIDE OR OUTSIDE THE CITY LIMITS.

DEPENDING ON STATE LAW AND OTHER FACTORS, HOWEVER, OUTSIDE THE CITY LIMITS NEITHER PRIVATE NOR GOVERNMENTAL RESTRICTIONS MAY BE AVAILABLE TO (1) RESTRICT THE NATURE OR EXTENT OF DEVELOPMENT NEAR THE SUBDIVISION, OR (2) PROHIBIT LAND USES NEAR THE SUBDIVISION THAT ARE INCOMPATIBLE WITH A RESIDENTIAL NEIGHBORHOOD.

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TRANSPORTATION AND NATURAL RESOURCES

STEVEN M. MANILLA, PE, EXECUTIVE MANAGER

411 West 13th Street
Executive Office Building
PO Box 1748
Austin, Texas 78767
(512) 854-9383

Date: February 15, 2011

MEMORANDUM

TO: Members of the Commissioners Court
FROM: Steven Manilla P.E., Executive Manager
SUBJECT: Amendments of Chapter 82 Travis County Code and Title 30 Travis County-City of Austin development code to require land use notification on the cover sheet of a final plat.

Summary:

The Commissioners Court set a public hearing on January 25, 2011 to receive testimony regarding proposed changes to Chapter 82 - Travis County's Standards for Construction of Streets and Drainage in Subdivisions and proposed an amendment to Title 30 - the Travis County-City of Austin combined development code in the Austin Extraterritorial Jurisdiction (ETJ) to add the requirement for a plat note that details the lack of authority in Texas to regulate land use in unincorporated areas. The purpose of this requirement was to alert constituents in the unincorporated area that cities and counties have very limited land use controls outside the city limits.

Similar language was proposed for a Title 30 amendment. City of Austin staff had concerns that the amendment language could cause unintended problems regarding grandfathering under Chapter 245, of the Local Government Code, so the City did not move forward with its adoption into Title 30. Code amendments to Title 30 must be approved by both Travis County and the City of Austin before Title 30 can be amended.

To address the concerns raised by the City of Austin staff, Travis County staff is now proposing that the cover page of residential plats outside the city limits include a consumer protection notification to homebuyers regarding the difference in the level of land use controls inside and outside the city limits. Please see Exhibits A and B for the proposed code amendments including the wording for the consumer protection notification. It is proposed that this amendment both be added to Title 30 and replace the plat note requirement previously adopted in §82.204(d)(6)(E) of the Travis County Code.

Notification of the public hearing was published in the Austin American Statesman on December 22 and December 23, 2010. Notice of the hearing was also placed on the Transportation and Natural Resource (TNR) webpage on the County website.

Issues and Opportunities:

Representatives of the Home Builders Association (HBA) raised concerns regarding the form, content and timing of the proposed notification during the January 25, 2011 public hearing. TNR staff met with HBA representatives to get additional information and work through the objections. At that meeting, several different possible solutions were discussed to include

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altering the wording of the notification. Other suggested solutions were to have the County file a separate notification document that would show up with the title commitments and to have the notification included in the sales contract. TNR staff is working with the County Attorneys office and the HBA to evaluate the proposed alternatives. If the Commissioners Court elects to modify the cover sheet language, which is part of the attached Order staff requests that the Court authorize staff to amend the Order to contain the modified cover sheet language.

Budgetary and Fiscal Impacts:

None

Required Authorizations:

Tom Nuckols, Assistant County Attorney

Attachments:

Order

Chapter 82 modification

Title 30 modification

AB:ab

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**ORDER OF THE TRAVIS COUNTY COMMISSIONERS COURT
AMENDING CHAPTER 82, TRAVIS COUNTY CODE**

WHEREAS, a residential subdivision plat is the document that land developers use to convert land from raw acreage into finished lots with adequate infrastructure on which to build homes;

WHEREAS, as consumers, prospective homebuyers are deserving of complete and relevant information about the finished product they are buying;

WHEREAS, many consumers are not aware that homes outside the city limits are more likely to be affected by incompatible development or land uses nearby because state law historically has allowed fewer controls on development and land use outside the city limits than inside the city limits;

WHEREAS, one important consideration when choosing to buy a home can be whether the surrounding area is susceptible to being developed or used in a way that disturbs quiet enjoyment of the neighborhood, decreases the property value of the home, or is otherwise incompatible with a residential area;

WHEREAS, prospective homebuyers typically receive a copy of their subdivision plat along with the title insurance commitment for the home or lot they are buying;

WHEREAS, state law authorizes cities and counties to regulate the form and content of subdivision plats; and

WHEREAS, the Commissioners Court finds that it will promote the health, safety, morals, and general welfare and the safe, orderly, and healthful development of the unincorporated area of the County if the cover page of residential subdivision plats outside the city limits includes a provision making prospective homebuyers aware of the historical difference between land use and development controls inside and outside the city limits so that they can make an informed decision regarding their purchase of a home outside the city limits.

NOW, THEREFORE, BE IT RESOLVED THAT TRAVIS COUNTY COMMISSIONERS COURT HEREBY ADOPTS THE AMENDMENTS TO CHAPTER 82 OF THE TRAVIS COUNTY CODE, THAT ARE ATTACHED HERETO AS EXHIBIT A AND THE AMENDMENT TO TITLE 30 OF THE AUSTIN/TRAVIS COUNTY SUBDIVISION REGULATIONS, THAT IS ATTACHED HERETO AS EXHIBIT B, BOTH OF WHICH EXHIBITS ARE MADE A PART HEREOF. THE AMENDMENT TO CHAPTER 82, OF THE TRAVIS COUNTY CODE, IS EFFECTIVE IMMEDIATELY. THE AMENDMENT TO TITLE 30, OF THE AUSTIN/TRAVIS COUNTY SUBDIVISION REGULATIONS IS EFFECTIVE UPON ADOPTION BY THE CITY COUNCIL OF THE CITY OF AUSTIN.

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IF A COURT OF COMPETENT JURISDICTION HOLDS ANY PART OF THIS ORDER TO BE INVALID, ILLEGAL, OR INEFFECTIVE, IT SHALL NOT IMPAIR, INVALIDATE, OR NULLIFY THE REMAINDER OF THE ORDER, AND THE EFFECT OF THE RULING SHALL BE LIMITED ONLY TO THE SPECIFIC PART HELD INVALID, ILLEGAL, OR INEFFECTIVE.

Ordered this ___ day of _____, 2011.

Samuel T. Biscoe, County Judge

**Ron Davis
Commissioner, Precinct One**

**Sarah Eckhardt
Commissioner, Precinct Two**

**Karen Huber
Commissioner, Precinct Three**

**Margaret Gómez
Commissioner, Precinct Four**

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EXHIBIT A

Part I. Section 82.204(d)(6)(E), as adopted on February 16, 2010, is repealed.

Part II. Section 82.204 is amended to add new subsection (f) to read as follows:

Section 82.204 Final Plat

(a) through (e) *No change.*

(f) Consumer Protection Notice for Homebuyers.

For a plat containing lots intended for residential use, the first page must include a location map for the subdivision, the name of the subdivision, and the notice set out below. The subdivision name and the notice must be printed in bolded capital letters one half inch high.

**CONSUMER PROTECTION NOTICE
FOR HOMEBUYERS**

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THE SUBDIVISION THAT ARE INCOMPATIBLE WITH A RESIDENTIAL
NEIGHBORHOOD.**

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EXHIBIT B

Part I. Title 30, Austin/Travis County Subdivision Regulations Is amended to add new Section 30-2-87 to read as follows:

Section 30-2-87 Consumer Protection Notice for Homebuyers.

For a plat containing lots intended for residential use, the first page must include a location map for the subdivision, the name of the subdivision, and the notice set out below. The subdivision name and the notice must be printed in bolded capital letters at least one half inch high.

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